

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-489-C - ORDER NO. 2012-725
SEPTEMBER 27, 2012

IN RE: Application of SC Lifeline, Inc. d/b/a ClearTalk for Designation as an Eligible Telecommunications Carrier) ORDER DESIGNATING) CLEAR TALK AS AN) ELIGIBLE) TELECOMMUNICATIONS) CARRIER FOR THE) PROVISION OF LIFELINE) SERVICE
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This matter comes before the Public Service Commission of South Carolina (“Commission”) on the November 30, 2011, Application of SC Lifeline, Inc. d/b/a ClearTalk (“ClearTalk”) for Designation as a wireless Eligible Telecommunications Carrier (“ETC”) in the State of South Carolina for the limited purpose of offering Lifeline service to qualified households (the “Application”).

For the reasons explained in this order, the Commission has concluded that the Application should be approved and that designation of ClearTalk as a wireless ETC on the terms provided in this order would serve the public interest.

BACKGROUND

As directed by the Commission, notice of the filing of the Application was published and proof of publication provided to the Commission on December 29, 2011. No petitions to intervene were filed in this matter. ORS is a party pursuant to statute.

ClearTalk filed the Direct Testimony of Adilia Aguilar on January 12, 2012, and the Supplemental Testimony of Ms. Aguilar on July 26, 2012. In addition, on July 9,

2012, ClearTalk filed with the Commission a Stipulation entered into between ClearTalk and the South Carolina Office of Regulatory Staff (“ORS”) (the “Stipulation”). The Stipulation recommends that ClearTalk be designated as a wireless ETC for the limited purpose of providing Lifeline service to qualified households in accordance with the terms of the Stipulation. A copy of the Stipulation is attached hereto as Appendix A.

A hearing was convened on August 15, 2012, at 10:30 a.m. in the offices of the Commission in Columbia, South Carolina, with the Honorable Randy Mitchell, Vice Chairman, presiding. At the hearing, John J. Pringle, Jr., Esquire, represented ClearTalk. C. Lessie Hammonds, Esquire, represented the ORS. Carol Bausinger adopted the direct and supplemental testimony of Ms. Aguilar.

ANALYSIS

Section 214(e)(2)(e) of the Telecommunications Act of 1996 (the “Act”) authorizes state commissions to designate common carriers that meet the requirements as ETCs.¹ Section 103-690 of the S.C. Code Ann. Regs. provides that the Commission will fulfill its responsibility to designate common carriers as ETCs and establishes the requirements that an applicant must meet in order to be designated an ETC.²

As demonstrated in the Application, the Testimony, the Stipulation, and the company’s Compliance Plan, ClearTalk satisfies all the relevant requirements for designation as an ETC specified in Sections 254 and 214 of the Act and Section 103-690 of the S.C. Code Ann. Regs. ClearTalk is (i) a common carrier as defined by 47 U.S.C.

¹ 47 U.S.C. Section 214(e)(2).

² See S.C. Code Reg. Section 103-690C.

Section 153(10), (ii) offers all the supported services,³ (iii) uses its own facilities to provide the services, and (iv) offers service throughout its designated service area. Additionally, it has been demonstrated that following designation, ClearTalk will (v) advertise the availability of its Universal Service offerings and charges through media of general distribution, specifically its Lifeline services throughout its ETC service area, and will provide notices at local unemployment, social security and welfare offices in satisfaction of S.C. Code Ann. Regs. Sections 103-690.1E(a)(1) and 103-690.1E(b)(1), (vi) make Lifeline service available to qualifying low-income consumers without requiring a service deposit in order to initiate Lifeline service if the consumer elects toll limitation services, will not charge such customer a monthly number portability charge, will verify annually that its Lifeline customers meet the qualifications and will provide sixty (60) days notice to customers which it believes no longer qualify for Lifeline service,⁴ (vii) certify that it complies with the service requirements applicable to the support it receives, (viii) be able to remain functional in emergency situations,⁵ (ix) satisfy consumer protection and service quality standards which are set forth in the CTIA Consumer Code as described in the Application including annual certification of its compliance and reporting of consumer complaints in accordance with S.C. Code Ann. Regs. Sections 103-690(C)(1)(a)(C)(3) and 103-690.1B(b)(4), (x) provide Lifeline local usage plans comparable to the incumbent local exchange carriers already operating in the area, (xi) comply with applicable reporting requirements including, but not limited to annual progress reports required in S.C. Code Ann. Regs. Section 103-690.1, annual

³ 47 U.S.C. Section 254(c); 47 C.F.R. Section 54.101(a); and S.C. Code Reg. Section 103-690C(a).

⁴ See S.C. Code Ann. Regs. Section 103.690.1E(a)-(b).

⁵ S.C. Code Ann. Regs. Section 103-690(C)(a)(2).

certification that it is able to remain functional in emergency situations required by S.C. Code Ann. Regs. Section 103-690.1B(b)(2) and annual outage reporting requirements of S.C. Code Ann. Regs. Section 103-690(B)(b)(2), and (xii) as explained below, take steps to limit fraud, waste and abuse in the federal universal fund programs.

On February 6, 2012, the FCC adopted comprehensive reforms to the low-income program to revise the Lifeline service requirements.⁶ In the Lifeline Reform Order, the FCC adopted specific reforms attempting to limit fraud, waste and abuse in the low-income program. ClearTalk commits to compliance with the rules as they are applicable.

Section 103-690C(b) of the S.C. Code Ann. Regs. provides that, in determining whether an ETC designation is in the public interest, the Commission must consider, *inter alia*, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.

Based upon the record, the Commission makes the following findings:

1. ClearTalk meets all federal and state requirements for designation as an ETC in the proposed areas where it seeks designation.
2. Granting this Application furthers the goals and purposes of Section 254 of the Telecommunications Act of 1996 in that access to the federal Universal Service Fund will ensure Lifeline support to qualifying customers.
3. Granting this Application is in the public interest.

⁶ *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 11-42, FCC 12-11, released February 6, 2012. ("Lifeline Reform Order").

IT IS THEREFORE ORDERED THAT:

1. SC Lifeline, Inc. d/b/a ClearTalk is hereby designated as an ETC, as of the effective date of this Order and in the requested areas, for the limited purpose of providing Lifeline service as requested in the Application on the terms provided in the Stipulation.
2. ClearTalk shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.
3. All federal USF funding received as a result of this Order shall be used to provide Lifeline support for low-income customers.
4. ClearTalk shall meet the reporting and certification requirements for ETCs as outlined by the *Lifeline Reform Order* and 26 S.C. Code Ann. Regs. 103-690.1, and file the annual reporting information with the Commission no later than June 30 of each year. A copy of this report shall be provided to the ORS.
5. ClearTalk shall administer the Lifeline program in conformity with the terms of the Stipulation, 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.101 *et seq.*, and 26 S.C. Code Ann. Regs 103-690.1(E)(a).
6. Should the Commission determine that ClearTalk has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes or regulations, the Commission may deny ClearTalk's annual recertification as an ETC.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


David A. Wright, Chairman

ATTEST:


Randy Mitchell, Vice Chairman

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2011-489-C

IN RE: Application of SC Lifeline, Incorporated d/b/a)
ClearTalk for Designation as an Eligible) **STIPULATION**
Telecommunications Carrier)
)

This Stipulation is made by and among the South Carolina Office of Regulatory Staff (“ORS”) and SC Lifeline, Incorporated d/b/a ClearTalk (“ClearTalk” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”).

WHEREAS, on November 30, 2011, the Company filed its Application requesting Designation as an Eligible Telecommunications Carrier (“ETC”);

WHEREAS, ORS has reviewed the Application and testimony of Adilia Aguilar;

WHEREAS, NTCH, Inc. is the parent company of SC Lifeline Incorporated d/b/a/
ClearTalk;

WHEREAS, on June 29, 2012 ORS received a copy of the Amended Petition of NTCH, Inc. for Designation as an Eligible Telecommunications Carrier in the States of North Carolina and Tennessee dated June 29, 2012 (“Amended Petition”), as attached;

WHEREAS, the Company is only seeking ETC Designation for the purpose of participation in the Federal Universal Service Low Income Fund ("USF");

WHEREAS, the Company will provide Lifeline service under the brand name “ClearTalk;” and

WHEREAS, as a result of its investigations, ORS has determined that subject to the provisions set forth below, ClearTalk's request for designation as an ETC should be approved for those wire centers listed in Exhibit C.

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1. ClearTalk is a radio common carrier and wireless service provider offering wireless voice communications and Lifeline services;
2. The Company provides its voice service plans, including a Lifeline plan, through the use of its own facilities;
3. ClearTalk agrees to advertise the availability of Lifeline using media of general distribution;
4. ClearTalk agrees to adopt into this Stipulation the Amended Petition, to comply with the requirements and conditions set out in the petition, and to provide a copy of any revisions or amendments filed with the FCC to ORS and comply with all such terms;
5. ClearTalk has requested ETC designation in the wire centers where it currently has network coverage, as detailed in Exhibit C of the Company's application;
6. The Company has limited its requested USF support to the federal USF low-income support program. ClearTalk certifies that all low-income USF funding it receives will be used to provide a credit to its Lifeline eligible customers, consistent with 47 CFR 54.403;
7. ClearTalk will file testimony in support of this Stipulation;
8. ClearTalk agrees to offer Lifeline credits consistent with the rates, terms, and conditions contained in its rate schedules and website and will publish the availability and the pricing of these same offerings on its website;

9. The Company agrees to only seek direct low-income support from the USF for those lines provided through the use of its own network. Until modified by the Public Service Commission of South Carolina (the "Commission"), ClearTalk agrees to utilize the means test established by the Federal Communications Commission ("FCC") and set forth in 47 C.F.R. 54.409;

10. ClearTalk agrees to provide Lifeline customers a company funded \$3.50 credit. In the event the Commission, the Federal Communications Commission, or a court of competent jurisdiction issues a decision that a credit of \$3.50 is not required to be provided by ETCs to South Carolina Lifeline customers, the parties agree that this Agreement will be modified to reflect that ruling. The company will also provide a federal lifeline credit of \$9.25 per month to qualifying consumers, consistent with 47 C.F.R. 54.403. Together, the state and federal credits offered in South Carolina will be at least \$12.75, subject to the provisions of this Paragraph;

11. ClearTalk agrees to allow qualifying low-income consumers to apply Lifeline discounts (federal and state) to any residential service plan that includes voice telephone service, including bundled packages of voice and data services; and plans that include optional calling features, such as but not limited to caller identification, call waiting, voicemail, and three-way calling. Eligible telecommunications carriers may also permit qualifying low-income consumers to apply their Lifeline discount to family shared calling plans;

12. ClearTalk agrees that it will abide by all advertising, reporting and verification requirements established by the FCC and the Commission;

13. ClearTalk agrees to file all reports requested by ORS or the Commission, including but not limited to: the "Telecommunications Company Annual Report", the "Authorized Utility Representative Form", the "Gross Receipts Form" and the "USF

Worksheet.” All of which may be found on the ORS website at www.regulatorystaff.sc.gov in the telecommunications forms section.

14. ClearTalk agrees to file with ORS a certified true copy of its Form 497 filed quarterly with the USAC, including revisions thereto, no later than five (5) calendar days after the Form or revision is filed with USAC;

15. ClearTalk agrees to offer a toll blocking and/or limitation option if toll is included with ClearTalk service. ClearTalk agrees that the company will not seek reimbursement for toll limitation services. The company agrees to provide toll block at no charge to customers seeking the service. Consistent with this provision, the company agrees to block dialing when a Lifeline call is roaming and when such blocking may only be overridden by specific action by the consumer on a per call basis. There are no activation fees or roaming charges for Lifeline customers;

16. ClearTalk agrees that it will not seek Lifeline reimbursement from the Federal Universal Service Fund for resold services provided by an underlying carrier;

17. ClearTalk agrees to implement or to participate in a program for initial certification and annual verification that insures that an eligible Lifeline customer only receives one Lifeline credit per residential address and must conform with 47 C.F.R. 54-410 and with the terms of the Amended Petition attached to and incorporated in this stipulation;

18. ClearTalk agrees to provide E911 compliant handsets to new Lifeline customers and to replace at no charge any non-compliant handsets for its existing customers who are approved as Lifeline customers;

19. If the designations sought herein are granted, ClearTalk will be supporting Universal Service in South Carolina based on its total South Carolina retail end user revenues;

20. ClearTalk agrees to submit a quarterly report to ORS demonstrating the number of Lifeline customers who have been deactivated by ClearTalk during the quarter due to (1) non-payment on their customer account during two consecutive 30-day periods; (2) the customer not passing the annual verification requirement; or (3) the customer voluntarily requesting deactivation;

21. ClearTalk shall comply with all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements;

22. The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation. More specifically, ClearTalk agrees to abide by the Commission regulations regarding designation of an ETC found in 26 S.C. Code Ann. Reg. 103-690 as well as requirements set out by the FCC for ETC designation and for participation in the Lifeline program;

23. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B) (Supp. 2011). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

...‘public interest’ means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina;
and
- (3) preservation of the financial integrity of the State’s public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation reached among the Parties serves the public interest as defined above;

24. The Parties agree to advocate that the Commission accept and approve this Stipulation in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein;

25. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party;

26. The Parties agree that signing this Stipulation will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation in its entirety without penalty or obligation;

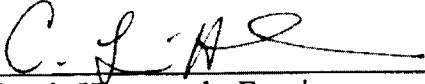
27. This Settlement Agreement shall be interpreted according to South Carolina law; and

28. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her

client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation. The Parties agree that in the event any Party should fail to indicate its consent to this Stipulation and the terms contained herein, then this Stipulation shall be null and void and will not be binding on any Party.

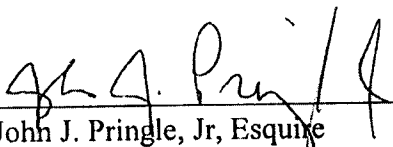
[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

Representing the South Carolina Office of Regulatory Staff

A handwritten signature in black ink, appearing to read 'C. Lessie Hammonds', is written over a horizontal line.

C. Lessie Hammonds, Esquire
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